

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 968 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAVIN @ BAKO NAGINDAS SHAH

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr.LR POOJARI, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/04/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 9th January 1997 rendered by respondent No.1 u/s.3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No.16 of 1985), for short "the PASA Act".

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B to this petition. They inter alia indicate that the petitioner has been indulging in criminal and anti-social activities of chain snatching and causing hurt with the aid of weapons like knife and/or razor to the innocent persons and witnesses resulting in fear in the mind of people about the security of their person and articles (ornaments). The Detaining Authority has placed reliance upon three offences, one of 1995 and two of 1996 registered in Shahibag Police Station, Ahmedabad, inter alia under Section 394, 324, 307 of the Indian Penal Code. The particulars of such offences have been set out in the grounds of detention.

It is not in dispute that in respect of the first offence under Section 394 and other provisions of the I.P.C. registered at Cr.No.6/95 the petitioner was enlarged on bail on 30.1.1995. The petitioner was also enlarged on bail in other two offences respectively on 8.4.1996 and 7.1.1997.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of four witnesses have been relied upon. They speak about the incidents dated 15.12.1996 and 18.12.1996 indicating beating in public the concerned witnesses and creating atmosphere of fear amongst the people collected at the time of such incidents.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been stamped as a dangerous person within the meaning of section 2(c) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :-

Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta,
C.P. reported in 1995 (2) G.L.R. 1268, where
the incidents were quoted in paras : 11 and 12
of the citation and it has been submitted that
facts of the present case run almost parallel to
the facts before the Apex Court in Mustakmiya's
case (supra).

6. In reply Mr. L.R.Poojari, learned A.G.P. for
the State has relied upon a decision in the case of Mrs.
Harpreet Kaur Harvinder Singh Bedi V/s. State of
Maharashtra and anr., reported in AIR 1992 SC 979.
However, the learned Advocate for the petitioner has
relied upon a decision of this Court rendered by a
Division Bench (Coram : A.P.Ravani, as His Lordship then
was & J.M.Panchal, JJ., per : Ravani,J.) on 3rd March
1993 in Special Criminal Application No. 1681 of 1992,
wherein 19 cases were registered against the detenu
there. The Bench held that by the very nature of the
offences it would be difficult to say that these offences
would affect the even tempo of public life. In that view
of the matter the ratio in Harpreet Kaur's decision
(supra) can hardly have any application to the facts of
the petitioner's case.

7. There are other grounds of challenge levelled
against the impugned order of detention. However, in
view of the fact that the petitioner would succeed on the
strength of decision of Mustakmiya's case (supra), it is
not necessary to deal with the other grounds. Hence,
following order is passed :

8. The impugned order of detention is hereby quashed
and set aside. The petitioner-detenu Pravin @ Bako
Nagindas Shah shall be forthwith set at liberty if he is
not required to be detained in any other case. Rule made
absolute accordingly.

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